

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHICAGO TILE INSTITUTE WELFARE
PLAN, and CHICAGO TILE INSTITUTE
PENSION PLAN.

Plaintiffs,

v.

THOMPSON'S COMMERCIAL
FLOORING, INC.

Defendant.

FILED: AUGUST 7, 2008

08CV4453

JUDGE DER-YEGHIAYAN

MAGISTRATE JUDGE SCHENKIER

JFB

CIVIL ACTION

COMPLAINT

Plaintiffs, the CHICAGO TILE INSTITUTE WELFARE PLAN, et al., by their attorneys, MICHAEL J. MCGUIRE and the law firm of GREGORIO & ASSOCIATES, complain of the Defendant THOMPSON'S COMMERCIAL FLOORING, INC. and allege as follows:

1. This action arises under Section 502 of the Employee Retirement Income Security Act (hereinafter referred to as "ERISA") and Section 301 of the Taft-Hartley Act. (29 U.S.C. §§1132 and 185). Jurisdiction is founded on the existence of questions arising thereunder.

2. The CHICAGO TILE INSTITUTE WELFARE PLAN, and the CHICAGO TILE INSTITUTE PENSION PLAN, (hereinafter referred to as the "Trust Funds") receive contributions from numerous employers pursuant to Collective Bargaining Agreements between the employers and the CERAMIC TILE, TERRAZZO, AND GRANITE CUTTERS UNION LOCAL NO. 21, formerly known as Local 67. (hereinafter referred to as the "Union").

3. The Trust Funds are multi-employer plans as defined under 29 U.S.C. § 1002.

4. The Trust Funds are administered in 725 E. Irving Park Road, Suite B, Roselle, Illinois and venue is proper in the Northern District of Illinois.

5. The Defendant is an employer engaged in an industry affecting commerce which entered into a Collective Bargaining Agreement (hereinafter referred to as the "CBA") with the Union. **(Exhibit A)**. The CBA binds the Defendant to the terms of the Trust Agreements which created the Trust Funds.

6. The CBA and Trust Agreements require the Defendant to submit monthly reports listing the hours worked by its bargaining unit employees (hereinafter referred to as "monthly contribution reports") and to make concurrent payment of contributions to the Trust Funds based upon the hours worked by said employees. In addition, the Defendant is required to make contributions to the Trust Funds measured by the hours worked by its subcontractors who are not signatory to a CBA with the Union.

7. The CBA and Trust Agreements provide that employers who do not timely pay fringe benefit contributions are also liable for liquidated damages, interest, reasonable attorney's fees, court costs, audit fees and other reasonable costs incurred in the collection process.

8. The Defendant breached the provisions of the CBA and Trust Agreements by failing to submit monthly contributions and reports for the months of April, May, and June 2008.

9. As a result of said breach, the Defendant is also liable to the plaintiffs for the following ancillary damages:

- a. attorney fees and costs pursuant to the CBA and 29 U.S.C. §1132(g)(2)(D); and either
- b. liquidated damages and interest pursuant to the CBA, Trust Agreements and 29 U.S.C. §1132(g)(2)(B); or
- c. double interest pursuant to E.R.I.S.A., 29 U.S.C. §1132(g)(2)(C).

WHEREFORE, Plaintiffs pray:

- A. That the Defendant be ordered to submit contributions and reports for the months of April, May, and June 2008.
- B. That the Defendant be ordered to pay interest or liquidated damages on any amount that is due pursuant to 29 U.S.C. §1132(g)(2)(C).
- C. That the Defendant be ordered to pay the reasonable attorney fees and costs incurred by the Plaintiffs.
- D. That Plaintiffs have such other and further relief as the Court deems just and equitable.

BY: /s/ Michael J. McGuire
MICHAEL J. MCGUIRE

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MEMORANDUM OF AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN

Name of Contractor Thompson's Commercial Flooring, Inc. Address 1760 Commerce DriveRTIN # 36-3641130Montgomery, IL 60538Phone (630)906-1770

herein called the "EMPLOYER," and Ceramic Tile Layers and Terrazzo Workers Union Local 67 the International Union of Bricklayers and Allied Craftsmen, AFL-CIO, herein called "UNION."

In consideration of the mutual promises made to each other, the Parties hereby agree as follows:

1. The EMPLOYER hereby recognizes the UNION as the sole and exclusive collective bargaining representative for and on behalf of employees of the EMPLOYER who are now or hereafter employed within the territorial and occupational jurisdiction of the UNION.

2. The parties adopt and the EMPLOYER agrees to be bound by the terms and provisions of a collective bargaining agreement dated JUNE 1, 1997, between the UNION and the CHICAGO TERRAZZO AND MOSAIC CONTRACTORS ASSOCIATION (Master Agreement), a copy of which agreement attached hereto and made a part hereof and the receipt of which is hereby acknowledged by the EMPLOYER.

3. This Memorandum Of Agreement shall remain in effect until the expiration of the Agreement adopted by reference, (Master Agreement) including any amendments or extensions thereto. The parties further agree that this Memorandum Of Agreement shall remain in effect from contract to contract thereafter and the parties specifically adopt any subsequent successor Agreement entered into between the UNION and the aforesaid CHICAGO TERRAZZO AND MOSAIC CONTRACTORS ASSOCIATION after the expiration date of the Agreement adopted by reference (Master Agreement) as aforesaid, unless written notice of termination or amendment is given in the manner provided below.

4. Either party desiring to amend or terminate this Memorandum Of Agreement must notify the other in writing at least sixty (60) days prior to the expiration of the existing Agreement adopted herein by reference (CHICAGO TERRAZZO AND MOSAIC CONTRACTORS ASSOCIATION - Master Agreement).

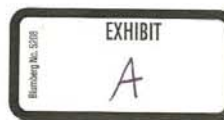
5. The EMPLOYER agrees to be bound by and to comply with the terms and provisions of the Agreements and Declarations of Trust establishing the Bricklayers & Allied Craftsmen Local 74 Welfare Fund, Bricklayers and Trowel Trades International Pension Fund, International Masonry Institute, Chicago Tile and Terrazzo Workers Union Local No. 67, and Illinois District Council No. 1 B.A.C. Annuity Trust as amended and as the same may hereafter be amended or restated from time to time, as though the same were fully incorporated herein. EMPLOYER agrees to make prompt payments to each of the above funds of the hourly contribution specified in the Master Agreement and all successor agreements to which employer becomes bound. The EMPLOYER hereby accepts and ratifies the appointment of the present Employees Trustees of the Funds and their Successor Employer Trustees as its representative.

6. EMPLOYER agrees to furnish UNION with certificate covering liability under the Illinois Workers' Compensation Act and the Illinois Occupational Disease Act.

7. EMPLOYER agrees to furnish UNION with a surety bond to insure prompt payment of wages, health and welfare fund contributions, pension fund contributions, apprentice training fund contributions and annuity fund contributions in amount and according to the provisions of the Master Agreement adopted by reference herein.

8. This agreement shall not be operative during any period when the EMPLOYER is a member in good standing of the Chicago Tile Contractors Association of Chicago.

IN WITNESS WHEREOF, the parties have executed this agreement dated this 25th day of

November, 1998.EMPLOYER: Thompson's Commercial Flooring, Inc.CERAMIC TILE LAYERS & TERRAZZO WORKERS
UNION LOCAL #67(Sign) By: Carol Thompson(Sign) By: Frank O'Leary(Print) By: Carol Thompson(Print) By: FRANK O'LEARY1000074
11/10/98

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